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NO. 86-1707

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1986

BRIAN P. BLINN,
Appellant

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee

ON APPEAL FROM THE
SUPREME JUDICIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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The Appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts on the ground that the question presented as to the validity of Mass. Gen. Laws c. 140, §27 is so insubstantial as not to require further argument.

I. THE STATUTE INVOLVED AND THE NATURE OF THE CASE.

A. The Statute

This appeal raises the question of the validity of Mass. Gen. Laws c. 140, §27 which provides that every motel owner or operator shall keep

> "a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room ... such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein and shall be open to the inspection of the licensing authorities, their agents and the police."

Appellant was found guilty of violating Mass. Gen. Laws c. 140, §27 for refusing to produce a motel register when requested to do so by a Massachusetts State trooper.

B. The Proceedings Below

The proceedings below have been adequately set forth in appellant's jurisdictional statement.

C. The Facts

Appellee relies on the facts set forth in Commonwealth v. Blinn, 399 Mass. 126 at 127, ___ N.E.2d ___ (1987) reproduced in appellant's jurisdictional statement.

II. REASONS FOR DISMISSING THE APPEAL.

A. This Court Should Dismiss The Appeal Because The Case Presents No Substantial Federal Question.

This appeal challenges the constitutionality of Mass. Gen. Laws c. 140, §27 under which he was convicted on the grounds that it violates the Fourth Amendment to the United States Constitution. Prior decisions of this Court, including Donovan v. Dewey, 452 U.S. 594 (1981); United States v. Biswell, 406 U.S. 311 (1972); and most recently Dow Chemical Co. v. United States, ___ U.S. ___, 106 S.Ct. 1819 (1986) demonstrate that the question

presented is controlled on the merits by settled doctrine and is lacking in substantiality. See, Salinger v. United States, 272 U.S. 542, 544 (1926).

In order to claim the protection of the Fourth Amendment, a claimant must show that he has a

> "constitutionally protected reasonable expectation of privacy." [Katz v. United States, 389 U.S. 347, 360 (1967)] (Harlan, J. concurring). The Amendment does not protect the merely subjective expectation of privacy, but only "those expectations that society is prepared to recognize as 'reasonable'." Id. at 361, 88 S.Ct., at 516."

Oliver v. United States, 466 U.S. 170 (1984) (field planted with marijuana located in a fenced and secluded area one mile from defendant's dwelling is an open field and is not an expectation of privacy that society recognizes as reasonable. California v. Ciraolo, ___ U.S. ___, 106 S.Ct. 1809, 1811 (1986).

Where there is no reasonable expectation of privacy there is no "search" within the meaning of the Fourth Amendment. Dow Chemical Co. v. United States, ___ U.S. ___, 106 S.Ct. 1819, 1826-27 (1986). To determine whether there is a constitutionally protected interest, no single factor is relied upon and the factual circumstances in their entirety are reviewed. Oliver v. United States, 104 S.Ct. at 1741. Dow Chemical Co. v. United States, 106 S.Ct. at 1827, n. 5.

In Donovan v. Dewey, 452 U.S. 594 (1981) this Court held that the warrantless inspections provided for in the Federal Mine Safety and Health Act were reasonable within the meaning of the Fourth Amendment. The Act allowed federal mine inspectors to enter and inspect any mine, with no advance notice and with no limit on the number of inspections or follow-up inspections.

> The greater latitude to conduct warrantless inspections of commercial property reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home ...
>
> The interest of the owner of commercial property is not one in being free from any inspections. ... Rather the Fourth Amendment protects the interest of the owner of property in being free from unreasonable intrusions onto his property by agents of the government. Id. at 599.

This Court found that notwithstanding the broad inspection powers provided by the Act, that the warrantless inspections were not "so random, infrequent or unpredictable that the owner ... has no real expectation that his property will from time to time be inspected by government officials." Id. at 599. The Court also noted that Congress had a substantial federal interest in improving the health and safety conditions in the Nation's

mines. Id. at 602. Similarly, in United States v. Biswell, 406 U.S. 311 (1972) this Court held that the warrantless search during busines hours of a locked storeroom of a licensed firearms dealer under the Gun Control Act of 1968 was reasonable within the meaning of the Fourth Amendment.

After noting the strong federal interest in conducting unannounced, frequent warrantless inspections the Court also noted:

> "It is also plain that inspections for compliance with the Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy. When a dealer chooses to engage in this pervasively regulated business ..., he does so with the knowledge that his records, firearms, and ammunitiion will be subject to effective inspection ... The dealer is not left to wonder about the purposes of the inspector or the limits of his task."

Id. at 316.

Applying this precedent to the facts of this case, it is clear that Blinn had no

reasonable expectation of privacy in the motel's guest register.

First, under Mass. Gen. Laws c. 140, §27 the register is required to be kept by statute and it is required to be disclosed by police thereby putting the defendant on notice. Commonwealth v. Blinn, 399 Mass. at 128. Second, the "industry" is one which has long been regulated by the Commonwealth, Liggett Drug Co. v. License Commissioners, 296 Mass. 41, 49-52 (1936) for the purpose of protecting the security, health and safety of travelers and their property. See, 43A C.J.S. §13 Newbury Junior College v. Brookline, 19 Mass. App. Ct. 197, 203-204 (1985); Commonwealth v. Altenhaus, 317 Mass. 270, 273 (1974); see also Mass. Gen. Laws c. 140, §§2, 5, 6, 7, 10-17, 26-32A. Third, "all motel guests are presumed to be aware that the

defendant was required by law to keep an accurate register because the laws regarding the register are required to be posted. G.L. c. 140, §31 (1984 ed.)." Commonwealth v. Blinn, 399 Mass. at 128. Fourth, the scope of the inspection under Section 27 is limited to the register which contains only the names and residences of motel guests. It is required to be kept by the innkeeper for only a year. The inspection is de minimus when compared to the far ranging warrantless inspections found reasonable in Donovan v. Dewey, 452 U.S. 594 (1981) and United States v. Biswell, 406 U.S. 311 (1972). Fifth, "in business premises a person enjoys less of an expectation of privacy than in a home." Commonwealth v. Blinn, 399 Mass. at 128; and finally the defendant was not a target of a criminal investigation. Id. at 129.

CONCLUSION

Wherefore, Appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to require further argument, and moves this Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered by the Supreme Judicial Court of the Commonwealth of Massachusetts.

Respectfully submitted,

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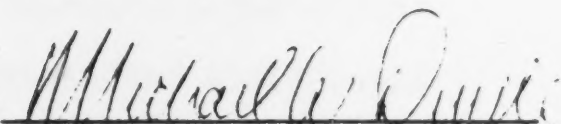
By: 

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